



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)

Do **NOT** use for expedited rule making

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WSR 18-07-077

Agency: Department of Social and Health Services, Economic Services Administration

Subject of possible rule making: The department is planning to amend sections in chapter 388-14A WAC dealing with the establishment of administrative child support orders including WAC 388-14A-3115 "The notice and finding of financial responsibility is used to set child support when paternity is not at issue", WAC 388-14A-3140 "What can happen at a hearing on a support establishment notice?", and other related rules as may be required. If needed to carry out the intent of this rulemaking project, the department may also adopt new sections in chapter 388-14A WAC.

This proposal is intended to clarify the rules regarding the type of evidence of parentage required in administrative establishment notices and in administrative hearings related thereto, regarding a child support obligation for a child who was born outside of Washington state.

Statutes authorizing the agency to adopt rules on this subject: RCW 26.23.050, RCW 43.20A.550, RCW 74.08.090, RCW 74.20A.310, RCW 74.20A.055, RCW 74.20A.056

Reasons why rules on this subject may be needed and what they might accomplish: The Division of Child Support (DCS) seeks to clarify the type of evidence of parentage required when establishing an administrative child support obligation for a child born to unmarried parents who filed a paternity acknowledgment or affidavit of paternity in another state and by that state's laws paternity is therefore conclusively established. In recognition of changes of the laws concerning parentage, DCS seeks to update language in chapter 388-14A WAC so that references to "paternity" will also refer to "parentage."

Under RCW 74.20A.055 and RCW 74.20A.056, DCS may serve a notice and finding of financial responsibility (NFFR) or a notice and finding of parental responsibility (NFPR) on a noncustodial parent (NCP) when the NCP is a legal parent of the child and there is not already an order setting or specifically relieving a support obligation for the NCP.

WAC 388-14A-3102 sets out the procedure for determining which administrative child support establishment notice is used, depending on the facts of a particular case. When the parents of a child born outside of Washington state have established paternity by filing a paternity acknowledgment or affidavit of paternity, DCS uses either a NFFR or a NFPR depending on when and where the acknowledgment or affidavit was filed.

WAC 388-14A-3115 sets out the rules for determining whether an NCP is a legal parent of a child. DCS may serve a NFFR if the parents filed a paternity acknowledgment or affidavit of paternity in another state and paternity is therefore conclusively established under that state's laws. The language in the current rule is ambiguous about what evidence is acceptable proof of the conclusive establishment of parentage in another jurisdiction. This ambiguity impacts administrative hearings held on administrative support establishment notices. Some but not all administrative law judges interpret the rule to require them to dismiss the administrative notice, which then requires DCS and/or the parties to go through a lengthier and costlier support establishment process in superior court. This results in inconsistent treatment of cases not only across the state but sometimes even within the same field office of the Office of Administrative Hearings (OAH). Because this ambiguity exists, DCS proposes to amend the rules to address in-state acknowledgments and affidavits and out-of-state ones in separate parts of the rule.

In addition, DCS proposes to amend WAC 388-14A-3140 to add a subsection clarifying the findings to be made by an administrative law judge in an administrative support establishment proceeding when parentage of a child is conclusively established under another state's acknowledgment or affidavit process.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: N/A

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
☐ Pilot rule making
☐ Agency study

☒ Other (describe) DCS engages in modified collaborative rulemaking. Those persons wishing to participate in developing the new rules are encouraged to contact Nancy Koptur at the DSHS Division of Child Support (DCS) Headquarters as soon as possible. DCS will post information regarding this rule development project and others on its web site, which can be found at www.childsupportonline.wa.gov or on the DSHS Economic Services Administration's *Policy Review* web site, which can be found at <https://fortress.wa.gov/dshs/f2ws03esaapps/extpolicy/>.

Rulemaking forms and draft rules for the Department of Social and Health Services may also be found on the DSHS *Filings and Rules* page at <https://www.dshs.wa.gov/sesa/rpau/filings-and-rulings>.

DSHS/DCS encourages the public to take part in developing the rules. After the rules are drafted, DSHS will file a copy with the Office of the Code Reviser with a notice of proposed rule-making, and will send a copy to everyone currently on the mailing list and to anyone else who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

(If necessary)

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Additional comments:

Date: March 19, 2018**Signature:****Name:** Katherine I. Vasquez**Title:** DSHS Rules Coordinator